

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3409 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DEVIKABEN SANJAY RAMESHBHAI PANCHAL (RAJPUT)

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR MA BUKHARI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Baroda City, Baroda passed an order in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act (for short PASA Act) detaining the petitioner under the

provisions of PASA Act.

2. The Detaining Authority took into consideration four offences registered against the detenu under the Bombay Prohibition Act. The authority also took into consideration the statements of three anonymous witnesses whose identity has not been disclosed by the Detaining Authority in exercise of powers under Section 9(2) of the PASA Act. The authority recorded subjective satisfaction for the need for exercise of these powers on being satisfied about the correctness and genuineness of the statements and the fear expressed by the witnesses qua the detenu. After considering the possibility of resorting to less drastic alternative remedy the Detaining Authority recorded that the petitioner is required to be immediately prevented from continuing her nefarious activities and detention under PASA was the only remedy available therefor.

3. The petitioner detenu challenges the detention by this petition on various counts. The main ground is that the Detaining Authority has not supplied all relevant documents, although a representation was made on 0-7-1999. The documents are the report of the Chemical Analyser in respect of the cases registered against the detenu so also the statements of the witnesses.

4. Mr. Patel, learned advocate appearing for the petitioner has drawn the attention of this court to copy of a notice addressed to the Chief Minister, Government of Gujarat on behalf of the detenu on 30-7-1999. He states that in response to the said representation report of the Chemical Analyser in respect of C.R. 377 of 1998 and C.R. No. 27 of 1999 have been supplied, whereas the reports in respect of C.R. No. 74 of 1997 and C.R. No. 64 of 1999 have not been supplied. The statements of witnesses have not been supplied at all. He submitted that this has infringed the right of the detenu for making an effective representation.

5. Mr. Bukhari, Learned AGP appearing for the respondents has opposed this petition. He admits that the Chemical Analyser's report in respect of C.R. No. 74 of 1997 and C.R. No. 64 of 1999 have not been supplied, but since C.R.No. 74 of 1997 relates to foreign liquor the contraband seized is not sent to the Chemical Analyser for analysis. He however states that the Chemical Analyser's report in respect of C.R. No. 64 of 1999 has not been supplied. Mr. Bukhari's another argument is that these reports were not considered by the Detaining Authority and therefore they are not required

to be supplied to the detenu. The demand is unfair and therefore the petition may be dismissed.

6. Considering the rival contentions it is amply clear that the Detaining Authority has relied upon Makarpura C.R. No. 64 of 1999 also and admittedly the report of the Chemical Analyser of the Forensic Science Laboratory has not been supplied to the detenu though demanded. It is the settled position of law that all the relevant documents including that of investigation have to be supplied to the detenu to enable him to make an effective representation which is a constitutional right. This aspect has been made clear by the Apex Court in the case of Sophia Gulam Mohad. Bham v. State of Maharashtra and others (1999) 6 SCC 593. While interpreting 'ground' it has been held that it does not mean only narration and conclusion of facts but also all materials on which they are based. In this regard decision in the case of Prakash Chandra Mehta v. Commissioner and Secretary Government of Kerala AIR 1986 SC 687 may also be considered wherein it was observed that the word 'grounds' has to receive an interpretation which would keep it meaningfully in tune with the contemporary notions. It was explained that the expression 'grounds' include not only conclusions of fact but also of basic facts on which those conclusions are founded. Here the offences registered against the petitioner form basis of the grounds of detention, and documents relating thereto have to be supplied so as to enable the detenu to make an effective representation against the detention. That having not been done, the detenu's right of making effective representation is infringed, which would render the continue detention illegal.

Apart from the Chemical Analyser's report, in the representation copies of statements of certain witnesses Rajendra Mohan Rao, Bharat Rupsingh, Pushaksinh Natwarsinh, Ashokbhai Govindbhai and Jagannath Kaduji Rao. It is revealed from the papers supplied to the detenu that these persons were part of the raiding party in respect of Makarpura Cr. No. 27 of 1999. It is not the case of the Detaining Authority that statements of these witnesses were not recorded. In fact the Detaining Authority has kept silence on the question of non supply of statements of these witnesses in the affidavit in reply. In view of the decision in the Special Civil Application No. 2080 of 1993 decided on 22-8-1994 by Division Bench of this Court, non supply of documents violates the provisions of Article 22(5) of the Constitution of India. There also statements of

witnesses recorded in the criminal cases were demanded by the detenu which were not supplied and it was observed:

"It is not the case of the respondents that no statements of other witnesses are recorded in the matter"

In this view of the matter when other side has not come with a case of non recording of statements, the non supply of statements of these witnesses would vitiate the continued detention. These witnesses were part of the raiding party and therefore were material witnesses. The necessary inference would be that their statements must have been recorded.

7. The petition is therefore deserves to be allowed and same is hereby allowed. The petitioner/detenu Smt. Devikaben Sanjay Rameshbhai Panchal (Rajput) be set at liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)